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No. 82-964

In the

Supreme Court of the United States

OCTOBER TERM, 1982

GEORGE W. DUNNE, et al.,

Petitioners,

vs.

CARL R. HANSEN, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Pursuant to Rule 22(5) of the United States Supreme Court, Petitioners reply to the argument newly raised in the Respondents' Brief in Opposition, which raises the following question:

Whether an active case and controversy remain where the Cook County Board enacted an apportionment plan in direct response to a judicial order, the validity of which is the subject of this Petition.

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REASONS FOR GRANTING THE WRIT

AN ACTIVE CASE AND CONTROVERSY REMAIN BECAUSE THE BOARD'S ACTION WAS TAKEN IN DIRECT RESPONSE TO A JUDICIAL ORDER, THE VALIDITY OF WHICH IS THE SUBJECT OF THIS PETITION.

Subsequent to the filing of the Petition for Certiorari in this case, the Cook County Board enacted the apportionment plan ordered by the district court and affirmed by the court of appeals. Respondents erroneously argue that the case is therefore moot. Petitioners maintain that the case presents an active case and controversy, because

the action of the Board, contradicting its own apportionment plan enacted only a year earlier, was taken in direct response to and as a consequence of the very judicial order challenged in the Petition in the instant case.

Indeed, the Board in a related ordinance acknowledged that its action was taken in response to the court's mandate. (Br. Opp. 13a) Even Respondents do not suggest that, but for the court's order, the Board would have adopted this apportionment plan. Consequently, the Board's action does not render moot the challenge to the validity of that order.

Moreover, under the unusual factual circumstances of this case, the Board's action essentially changed nothing. The two additional Commissioners had already been elected in the November, 1982 election, pursuant to the district court's order of January 6, 1982. Recognizing at that time that his decision was subject to review, the court had made provision to avoid the necessity of a special election. It was understood, of course, that the positions of the two additional Commissioners were subject to final review of the district court's plan. The present enactment by the County Board merely finished carrying out the district court's stayed order that an ordinance be enacted. (Pet. 7a-8a) Like the election of the extra Commissioners, it was in practical furtherance of the court's order, and like it, could be rescinded.

In *Chapman* v. *Meier*, 420 U.S. 1, 15 (1975), this Court held that multi-member districts did not constitute established state policy when their existence was mandated by a series of court orders, even if the legislature once briefly adopted such a plan. Similarly, the Cook

County Board's action in response to a judicial order does not qualify the plan as legislatively established, or moot a challenge to the validity of that order.

In fact, the validity of that order is still at issue. As Petitioners urged in the Petition, the district court and court of appeals applied the wrong standard in this Fourteenth Amendment apportionment case, resulting in a dangerous and confusing precedent. Therefore, contrary to Respondents' contention, this case presents neither a narrow nor a moot issue, nor a mere question of a factual determination. The apportionment as now enacted need not be final in Cook County, and other courts need not be faced with a misleading definition of their powers to intervene into local government affairs.

The major case relied upon by Respondents in support of their mootness argument highlights this point. *Rice* v. *Sioux City Memorial Park Cemetery,* 349 U.S. 70 (1955), involved a suit for damages over a contract clause prohibiting burial of anyone but a Caucasian in the subject burial plot. The courts of Iowa upheld the clause as a defense in that case, even though it was otherwise unenforceable. Subsequently, the state passed corrective legislation. The writ of certiorari was dismissed, not because the legislation rendered the case moot, but because there was no possibility of recurrence. Therefore, the case had only "isolated significance." 349 U.S. at 76-77.

The issues in this case are of major significance, both for Cook County and for other governmental units and courts concerned with the body of precedent in apportionment cases. Consequently, there are indeed special and important reasons as described, *supra,* and in the Petition, for granting a writ of certiorari in this case.

CONCLUSION

For the reasons stated in this Petition, petitioners pray that this Honorable Court grant a writ of certiorari to review the decision below.

Respectfully submitted,

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